

1991

c 16 Employment Standards Amendment Act
(Employee Wage Protection Program), 1991 / Loi
de 1991 modifiant la Loi sur les normes d'emploi
(Programme de protection des salaires des
employés)

Ontario

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CHAPTER 16

An Act to amend the Employment Standards Act to provide for an Employee Wage Protection Program and to make certain other amendments

Assented to October 16th, 1991

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 2 (3) of the *Employment Standards Act* is amended by striking out “47 or 49” in the fourth line and substituting “39c, 39f, 47 or subsection 49 (1) or (2)”.

(2) Section 2 of the Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 1, is further amended by adding the following subsection:

Non-applica-
tion of
Statutory
Powers
Procedure
Act

(4) Part I of the *Statutory Powers Procedure Act* does not apply to the exercise of any power conferred on the Program Administrator under Part XII-A or to the exercise of any power by the Director under section 50.

2. Section 39c of the Act, as enacted by the Statutes of Ontario, 1983, chapter 55, section 2, is repealed and the following substituted:

Order of
employment
standards
officer

39c. Where an employer contravenes a provision of this Part, an employment standards officer may order what action, if any, the employer shall take or what the employer shall refrain from doing in order to constitute compliance with this Part and may make an order to reinstate in employment or to hire the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement or hiring for loss of earnings or other employment benefits.

3. Section 39f of the Act, as enacted by the Statutes of Ontario, 1988, chapter 7, section 1, is repealed and the following substituted:

Employment
standards
officer may
make order

39f. Where an employer dismisses an employee who refuses any work that is a contravention of subsection 2 (2) of the *Retail Business Holidays Act*, an employment standards officer may order the employer to reinstate in employment the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement for loss of earnings or other employment benefits.

4. Section 40a of the Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 2 and amended by 1984, chapter 31, section 1 and 1987, chapter 30, section 5, is fur-

CHAPITRE 16

Loi portant modification de la Loi sur les normes d'emploi par création d'un Programme de protection des salaires des employés et par adoption de certaines autres modifications

Sanctionnée le 16 octobre 1991

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative de la province de l'Ontario, édicte :

1 (1) Le paragraphe 2 (3) de la loi intitulée *Employment Standards Act* («*Loi sur les normes d'emploi*») est modifié par substitution, à «47 or 49» à la quatrième ligne, de «39c, 39f, 47 or subsection 49 (1) or (2)».

(2) L'article 2 de la Loi, tel qu'il est modifié par l'article 1 du chapitre 55 des Lois de l'Ontario de 1983, est modifié de nouveau par adjonction du paragraphe suivant :

2 L'article 39c de la Loi, tel qu'il est adopté par l'article 2 du chapitre 55 des Lois de l'Ontario de 1983, est abrogé et remplacé par ce qui suit :

39c. Where an employer contravenes a provision of this Part, an employment standards officer may order what action, if any, the employer shall take or what the employer shall refrain from doing in order to constitute compliance with this Part and may make an order to reinstate in employment or to hire the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement or hiring for loss of earnings or other employment benefits.

3 L'article 39f de la Loi, tel qu'il est adopté par l'article 1 du chapitre 7 des Lois de l'Ontario de 1988, est abrogé et remplacé par ce qui suit :

39f. Where an employer dismisses an employee who refuses any work that is a contravention of subsection 2 (2) of the *Retail Business Holidays Act*, an employment standards officer may order the employer to reinstate in employment the employee concerned, with or without compensation, or to compensate the employee in lieu of reinstatement for loss of earnings or other employment benefits.

4 L'article 40a de la Loi, tel qu'il est adopté par l'article 2 du chapitre 22 des Lois de l'Ontario de 1981 et modifié par l'article 1 du chapitre 31 des Lois de l'Ontario de 1984

ther amended by adding the following subsections:

et par l'article 5 du chapitre 30 des Lois de l'Ontario de 1987, est modifié de nouveau par adjonction des paragraphes suivants :

Failure to
pay sever-
ance pay

(18) If a trade union has entered into a settlement agreement under subsection (15) and the employer does not pay the severance pay agreed to or the trade union demonstrates that the agreement was made as the result of fraud or coercion, an employment standards officer may make an order under section 47 as to what action, if any, the employer shall take and may make an order to compensate the employee for the severance pay that is owed.

Calculation
of severance
pay

(19) For purposes of subsection (18), the amount of severance pay an employee is entitled to in an order under section 47 is the amount as calculated under subsection (1c) or as negotiated in the collective agreement, whichever is the greater.

5. The Act is amended by adding the following Part:

5 La Loi est modifiée par adjonction de la partie suivante :

PART XII-A EMPLOYEE WAGE PROTECTION PROGRAM

Program
established

40b.—(1) The Employee Wage Protection Program is hereby established.

Wages

(2) Except for the purposes of section 40h, when an employee is compensated by the Program, the wages for which the employee may receive compensation are,

- (a) regular wages, including commissions, overtime wages, vacation pay, holiday pay, termination pay and severance pay;
- (b) amounts that are deemed to be wages under subsection 33 (4);
- (c) compensation awarded under sections 39, 39c and 39f, clause 39k (3) (b) and section 39m in so far as the compensation is awarded for loss of earnings and for termination pay and severance pay; and
- (d) such additional payments as may be prescribed by regulation.

Vacation pay

(3) The vacation pay for which an employee may be compensated is the greater of the minimum vacation pay provided in subsection 29 (2) and the amount contractually agreed to by the employer and the employee or his or her agent.

Holiday pay

(4) The amount of holiday pay for which an employee may be compensated from the Program is the greater of the amount for the holidays at the rate as determined under this Act and the regulations and the amount for the holidays at the rate as contractually agreed to by the employer and the employee or his or her agent.

Overtime
wages

(5) The overtime wages for which an employee may be compensated are the greater of the amount of overtime pay provided in section 25 and the amount contractually agreed to by the employer and the employee or his or her agent.

Termination
pay

(6) The amount of termination pay for which an employee may be compensated is the amount as provided by subsection 40 (7).

Severance
pay

(7) The amount of severance pay for which an employee may be compensated is the amount as provided by subsection 40a (1c).

Program Administrator	40c. —(1) The Minister shall appoint a person to administer the Program.
Powers and duties	(2) The Program Administrator may exercise the powers conferred and shall perform the duties imposed on him or her under this Act.
Delegation of authority	(3) The Program Administrator may delegate any of his or her powers and duties to a person employed at the Ministry.
Legal proceedings	(4) The Program Administrator, in the name of his or her office, may bring any proceeding he or she considers necessary in relation to the Program and he or she may respond to any proceeding in that name.
Testimony in civil proceedings	40d. The Program Administrator and any person employed at the Ministry to whom his or her powers and duties have been delegated shall not be required to testify in a civil proceeding or in a proceeding before any other tribunal respecting information obtained in the discharge of the Program Administrator's duties under this Act.
Right to compensation	40e. —(1) An employee is eligible for compensation from the Program if, <ul style="list-style-type: none"> (a) where the employer is insolvent, the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy and the claim has not been paid; (b) an employment standards officer has made an order that the employer pay wages to the employee, unless the employer has applied to have the order reviewed or the amount set out in the order has been paid; (c) an employment standards officer has made an order that the directors pay wages to the employee, unless the employer has applied to have the order reviewed or the amount set out in the order has been paid; or (d) a referee acting under section 39k, 50 or 51 or an adjudicator acting under subsection 49 (3) has made, amended or affirmed an order that wages are owed to the employee and the amount set out in the order has not been paid.
Idem	(2) If an employee has been paid wages pursuant to an order and the employee is still owed wages under the order, the employee is eligible for compensation from the Program for the balance of wages owed to the limit of the recovery set out in section 40i.
Deemed order	(3) For purposes of this Act, any claim described in clause (1) (a) that has been verified by the Program Administrator is deemed to be an order.
Construction workers	40f. —(1) Despite section 40e, employees who are entitled to the protection of a lien under the <i>Construction Lien Act, 1983</i> are only eligible for compensation from the Program if they have used their best efforts to preserve their lien claim.
Idem	(2) If the Program Administrator is satisfied that such employees could not get sufficient information to preserve their rights, were unable to preserve them or were unaware of their rights, he or she may allow the employees to be compensated from the Program in the same manner as any other employee.
Idem	(3) If an employee who is entitled to the protection of a lien is compensated by the Program, the Program Administrator may require the employee to subrogate his or her rights in the lien to the Program Administrator, or may require the employee to

assign any judgment arising from the lien claim to the Program Administrator.

Settlement
of severance
pay

40g.—(1) If a trade union has entered into a settlement agreement with an employer over severance pay under subsection 40a (15), and the employer has paid the severance pay agreed to, an employee is not eligible for compensation for severance pay from the Program.

Exception

(2) Despite subsection (1), an employee is eligible for compensation for severance pay from the Program if an employment standards officer has made an order under subsection 47 (1) with respect to the severance pay and it has not been paid and the employer has not applied to have the order reviewed.

Settlement
of wages

40h.—(1) An employee who has entered into a settlement or compromise of wages under clause 47 (1) (b) and who has received the amount agreed upon is not eligible for compensation from the Program for the wages that were the subject of the settlement or compromise.

Exception

(2) Despite subsection (1), an employee is eligible for compensation from the Program for the wages that were the subject of the settlement or compromise if an employment standards officer has made an order under subsection 47 (1) with respect to those wages and they have not been paid and the employer has not applied to have the order reviewed.

Maximum
recovery

40i. The maximum amount of compensation, before deductions made under subsection 40j (3), that an employee may receive from the Program in respect of his or her employment with an employer is \$5,000 or such greater amount as is prescribed.

When
compensa-
tion ordered

40j.—(1) An employee who is eligible for compensation from the Program may be compensated when wages are due and owing and the Program Administrator has verified that the wages are owing and their amount.

Apportion-
ment

(2) Upon approving compensation for the employee, the Program Administrator shall apportion the compensation in such manner as may be prescribed among the types of wages described in subsection 40b (2).

Deductions

(3) Upon approving compensation for the employee, the Program Administrator shall deduct from the compensation such amounts as are required to be deducted by a law of Canada or of Ontario.

Application
for review

40k.—(1) If an employer has made an application for review under section 50, the Program Administrator may approve compensation only if the referee acting under section 50 affirms or amends the order such that the employer is found to be liable to pay the wages.

Idem

(2) If an employment standards officer has made a report that an employer may have failed to pay wages owed to an employee and the Director appoints a referee to hold a hearing under section 51, the Program Administrator may approve compensation from the Program only if the referee acting under section 51 orders that the employer pay the wages.

Payment
while
hearing
continues

(3) If, during a hearing under section 51, the referee finds that the employees are entitled to wages or there is an undisputed portion of wages and he or she makes an interim order before the hearing is completed that those wages are owed, the Program Administrator may approve compensation from the Program in the amount of the interim order.

Disputes
over amount
owed

(4) If, during a hearing under section 50, the referee finds that there is an undisputed portion of wages to which the employees

are entitled and he or she amends or affirms the order to the extent of those wages before the hearing is completed, the Program Administrator may approve compensation from the Program in the amount of the interim order.

Complaints
under s. 49

40l. If an employee applies for a review under subsection 49 (2), the Program Administrator may approve compensation only if the adjudicator conducting the review makes an order that the employee is entitled to the wages or amends the order of the employment standards officer such that the employee is entitled to wages.

Recovery of
overpay-
ments

40m. If the compensation received from the Program exceeds the wages to which the employee was entitled, the Program Administrator, on the basis of the prescribed criteria, may seek repayment of the excess amount.

Excess
recovery

40n.—(1) If the Program Administrator recovers from a person liable to pay an amount greater than the compensation that the employee received from the Program, he or she shall pay the excess amount to the employee.

Calculation
of excess

(2) For purposes of this section, the excess amount is the amount the Program has recovered up to the amount owed under the order less the compensation already received by the employee.

Subrogate to
Program

40o.—(1) The Program Administrator is subrogated to all the rights of an employee who is compensated by the Program and may bring an action against the employer, or any other person who is liable, for administration costs as determined under clause 47 (1) (c) and for wages or may use the provisions of this Act to collect the amount.

Assignment
of judgment

(2) The Program Administrator may accept an assignment of a judgment obtained by an employee in respect of wages as described in subsection 40b (2) and the Program Administrator may exercise the rights of the employee under the judgment.

Interest

40p. Where money may be received by an employee under this Part, or may be collected from a person who is liable to pay, interest may be collected on the money as prescribed.

Limits on
recovery

40q. If the employee and employer enter into an agreement for the purpose of increasing the amount of compensation the employee is eligible to recover from the Program, the Program Administrator may decide to limit the compensation to the amount as determined under the employment contract before the agreement was made.

Agreements
with federal
government

40qa. The Minister, with the approval of the Lieutenant Governor in Council, may enter into agreements with the Government of Canada related to the payment of compensation under this Part and the administration of compensation if employees are entitled to compensation for wages under an Act of the Parliament of Canada.

Compensa-
tion not
assignable

40qb.—(1) Except as provided in the *Support and Custody Orders Enforcement Act, 1985* and in this section, no amount payable as compensation under this Part is capable of being assigned.

Deemed
assignment

(2) The Program Administrator may deem that an assignment is made if the prescribed conditions are met and the prescribed restrictions are not breached.

Restriction

(3) The number of deemed assignments respecting an employee that a person may present in any period may be restricted.

- Idem (4) Deemed assignments of compensation are limited to additional payments as described in clause 40b (2) (d).
- Idem (5) Deemed assignments may only be made to a prescribed person or to a person who is a member of a prescribed class of persons.

6. The Act is further amended by adding the following Part:

6 La Loi est modifiée en outre par adjonction de la partie suivante :

**PART XII-B
LIABILITY OF DIRECTORS**

- Definition **40r.**—(1) In this Part, “director” means a director of a corporation and includes a shareholder who is a party to a unanimous shareholder agreement.
- Application (2) This Part applies to shareholders described in subsection (1) only to the extent that the directors are relieved, under subsection 108 (5) of the *Business Corporations Act, 1982* or subsection 146 (5) of the *Canada Business Corporations Act*, of their liability to pay wages to the employees of the corporation.
- Idem (3) This Part does not apply to directors of corporations to which Part III of the *Corporations Act* applies or to which the *Co-operative Corporations Act* applies.
- Idem (4) This Part does not apply to directors, or persons who perform functions similar to those of a director, of a college of a health profession or a group of health professions that is established or continued under an Act of the Legislature.
- Idem (5) This Part does not apply to directors of corporations,
(a) that have been incorporated in another jurisdiction;
(b) that have objects that are similar to the objects of those types of corporations referred to in subsection (3); and
(c) that are carried on without the purpose of gain.
- Liability of directors **40s.**—(1) The directors of an employer are jointly and severally liable for wages as provided in this Part if,
(a) where an employer is insolvent, the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer’s trustee in bankruptcy and the claim has not been paid;
(b) an employment standards officer has made an order that the employer is liable for wages, unless the amount set out in the order has been paid or the employer has applied to have it reviewed;
(c) an employment standards officer has made an order that a director is liable for wages, unless the amount set out in the order has been paid or the employer or the director has applied to have it reviewed; or
(d) an adjudicator acting under subsection 49 (3) or a referee acting under section 50 or 51 has made, amended or affirmed an order that the employer is liable for wages or that the directors are liable for wages and the amount set out in the order has not been paid.
- Employer primarily responsible (2) Despite subsection (1), the employer is primarily responsible for an employee’s wages but proceedings against the employer under this Act do not have to be exhausted before pro-

ceedings may be commenced to collect wages from directors under this Part.

Wages	(3) The wages that directors are liable for under this Part are wages, not including termination pay and severance pay as they are provided for under this Act, under a contract of employment, or under a collective agreement and not including amounts that are deemed to be wages under this Act.
Vacation pay	(4) The vacation pay that directors are liable for is the greater of the minimum vacation pay provided in subsection 29 (2) and the amount contractually agreed to by the employer and the employee or his or her agent.
Holiday pay	(5) The amount of holiday pay that directors are liable for is the greater of the amount for the holidays at the rate as determined under this Act and the regulations and the amount for the holidays at the rate as contractually agreed to by the employer and the employee or his or her agent.
Overtime wages	(6) The overtime wages that directors are liable for are the greater of the amount of overtime pay provided in section 25 and the amount contractually agreed to by the employer and the employee or his or her agent.
Directors' maximum liability	(7) The directors of an employer corporation are jointly and severally liable to the employees of the corporation for all debts not exceeding six months' wages, as described in subsection (3), that become payable while they are directors for services performed for the corporation and for the vacation pay accrued while they are directors for not more than twelve months under this Act and the regulations made under it or under any collective agreement made by the corporation.
Interest	(8) Directors are liable to pay interest as prescribed on outstanding wages for which they are liable.
Contribution from other directors	(9) A director who has satisfied a claim for wages is entitled to contribution in relation to the wages from other directors who are liable for the claim.
Liability for settlements	40t. —(1) Directors are liable to the Employee Wage Protection Program for compensation awarded under section 40h to the extent and in the circumstances described in this section.
Idem	(2) A director shall be liable for wages, as described in subsection 40s (3), to the extent of the settlement or compromise unless, <ul style="list-style-type: none"> (a) at the time of or after the settlement or compromise, the employer becomes insolvent and the director knew or ought to have known of the insolvency when the settlement or compromise was agreed to; or (b) the settlement or compromise was made as the result of fraud or coercion on the part of the employer and the director knew or ought to have known of it.
Determination of liability	(3) A director shall only be held liable for an amount in excess of the settlement or compromise when, on the grounds set out in subsection (2), an employment standards officer makes an order assessing such greater amount.
Maximum liability	(4) Nothing in this section increases the maximum liability of a director under this Act beyond the amounts set out in subsections 40s (7) and (8).
Orders: when order against employer	40u. —(1) If an employment standards officer makes an order against an employer under section 47 that wages be paid, he or she may make an order to pay wages, as described in subsection 40s (3), against some or all of the directors of the employer and

may serve a copy of the order on them together with a copy of the order to pay against the employer.

Application
for review

(2) Within fifteen days of service of the order or in such longer period as the Director may for special reasons allow, a director may apply under section 50 to have the order against them reviewed or to have a finding that he or she is a director reviewed.

Idem

(3) For the purposes of a review provided for in subsection (2), a reference in section 50 to "employer" shall be deemed to read as a reference to "director".

Idem

(4) Despite subsection 50 (1), a director is not required to pay the wages to the Director in order to apply for a review under that subsection.

Effect of
order

(5) If the directors do not comply with the order or do not apply to have it reviewed, the order becomes final and binding against those directors even though a review hearing is held to determine another person's liability under this Act.

Orders:
insolvent
employer

(6) If an employer is insolvent and the employee has caused a claim for unpaid wages to be filed with the receiver appointed by a court with respect to the employer or with the employer's trustee in bankruptcy, and the claim has not been paid, the employment standards officer may issue an order to pay wages as described in subsection 40s (3) against some or all of the directors and shall serve it on them.

Procedure

(7) Subsections (2), (3), (4) and (5) apply with necessary modifications to an order made under subsection (6).

Maximum
liability

(8) Nothing in this section increases the maximum liability of a director beyond the amounts set out in subsections 40s (7) and (8).

Orders after
order against
employer

40v.—(1) An employment standards officer may make an order to pay wages as described in subsection 40s (3) against some or all of the directors of an employer who were not the subject of an order under subsection 40u (1) or (6), and may serve it on them,

- (a) after an employment standards officer has made an order against the employer under section 47 that wages be paid and they have not been paid and the employer has not applied to have the order reviewed;
- (b) after an employment standards officer has made an order against directors under subsection 40u (1) or (6) and the amount has not been paid and the employer or the directors have not applied to have it reviewed;
- (c) after an adjudicator has made, amended or affirmed an order against an employer under section 49 that an amount be paid and the amount has not been paid; or
- (d) after a referee acting under section 50 or 51 has made, affirmed or amended an order that the employer or the directors owe wages to the employee.

Review

(2) A director who is served under subsection (1) and who considers himself or herself aggrieved by the order may, within fifteen days of its service or such longer period as the Director may for special reasons allow, apply to have it or the finding that he or she is a director reviewed by way of a hearing.

Application
for review

(3) An application for review shall be made in writing to the Director and shall specify the grounds for the application.

Hearing

(4) The review shall be heard as soon as is practicable by a referee selected by the Director from the panel of referees.

Parties	(5) The directors who are served, the employment standards officer from whose order the application for review is taken and such other persons as the referee may specify are parties to the application for review and, on the review, the directors served shall be the applicants and the employment standards officer and such other persons specified by the referee, if any, shall be the respondents.
Idem	(6) On a review, the referee may substitute his or her findings for those of the employment standards officer who issued the order being reviewed and may amend, rescind or affirm the order against any or all of the directors who were served.
Decision final and binding	(7) A decision of the referee under this section is final and binding upon the parties to the review and on such other parties as the referee may specify and is not subject to a review under section 50.
Maximum liability	(8) Nothing in this section increases the maximum liability of a director beyond the amounts set out in subsections 40s (7) and (8).
Payment to Director	40va. At the discretion of the Director, a director who is subject to an order under section 40u or 40v may be ordered to pay the wages in trust to the Director.
Limitation	40w. —(1) In the event of a conflict between the limitation period set out in subsection 63 (1) and a limitation period in any other Act, the limitation period in subsection 63 (1) applies unless the provision in the other Act states that it is to prevail over that subsection.
Assignment of judgment	(2) If a judgment has been obtained against the employer or a certificate has been filed under section 54, a director from whom the Program Administrator has recovered is entitled to an assignment of the judgment or certificate to the extent of the amount that has been recovered from that director after the Employee Wage Protection Program and the employees have fully recovered the wages that were owed.
Service	40x. —(1) A director may be served by prepaid registered mail addressed to his or her last known address or may be served personally.
Appointment of adjudicator	(2) If the document that was mailed under subsection (1) is returned and the director is not served personally, the Director may appoint an adjudicator to consider the manner of service.
Powers of adjudicator	(3) The adjudicator may order that service be effected in such manner as he or she considers appropriate in the circumstances.
Offence	40y. Any director who fails to comply with an order of an employment standards officer and who has not applied for a review of it or who fails to comply with an order of an adjudicator or a referee is guilty of an offence and is liable on conviction to a fine not exceeding \$50,000.
No contracting	40z. —(1) No provision in a contract, in the articles of incorporation or the by-laws of a corporation or in a resolution of a corporation relieves a director from the duty to act according to this Act or relieves him or her from liability for breach of it.
Indemnification of directors	(2) An employer may indemnify a director, a former director and the heirs or legal representatives of a director or former director against all costs, charges and expenses, including an amount paid to satisfy an order under this Act or paid in respect of a certificate issued under this Act, reasonably incurred by the director in respect of any civil or administrative action or proceeding to which he or she is a party by reason of being or having been a director of the employer if,

- (a) he or she has acted honestly and in good faith with a view to the best interests of the employer; and
- (b) in the case of a proceeding or action that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

Civil
remedies
protected

40za. No civil remedy that a person may have against a director or that a director may have against any person is suspended or affected by this Part.

7. The Act is further amended by adding the following section:

7 La Loi est modifiée en outre par adjonction de l'article suivant :

Appointment
of adjudica-
tors

42a.—(1) The Minister shall appoint such persons to be adjudicators as he or she considers necessary for the purposes of this Act.

Remunera-
tion

(2) An adjudicator shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

8. The Act is further amended by adding the following section:

8 La Loi est modifiée en outre par adjonction de l'article suivant :

Wages

46a. Despite subclause 1 (p) (iv), payments described in clause 40b (2) (d) shall, for the purposes of this Part, be deemed to be wages.

9.—(1) Clause 47 (1) (c) of the Act, as enacted by the Statutes of Ontario, 1981, chapter 22, section 3 and amended by 1989, chapter 72, section 48 and 1990, chapter 26, section 3, is repealed and the following substituted:

9 (1) L'alinéa 47 (1) (c) de la Loi, tel qu'il est adopté de nouveau par l'article 3 du chapitre 22 des Lois de l'Ontario de 1981 et modifié par l'article 48 du chapitre 72 des Lois de l'Ontario de 1989 et par l'article 3 du chapitre 26 des Lois de l'Ontario de 1990, est abrogé et remplacé par ce qui suit :

- (c) issue an order in writing to the employer to pay forthwith to the Director in trust any wages to which an employee is entitled and in addition such order shall provide for payment, by the employer to the Director, of administration costs in the amount of 10 per cent of the wages or \$100, whichever is the greater.

(2) Section 47 of the Act, as amended by the Statutes of Ontario, 1981, chapter 22, section 3, 1989, chapter 72, section 48 and 1990, chapter 26, section 3, is further amended by adding the following subsections:

(2) L'article 47 de la Loi, tel qu'il est modifié par l'article 3 du chapitre 22 des Lois de l'Ontario de 1981, par l'article 48 du chapitre 72 des Lois de l'Ontario de 1989 et par l'article 3 du chapitre 26 des Lois de l'Ontario de 1990, est modifié de nouveau par adjonction des paragraphes suivants :

Failure to
pay sever-
ance pay

(1a) If an employee has agreed to a compromise or settlement under clause (1) (b) and the employer does not pay the wages agreed upon or the employee demonstrates that the compromise or settlement was entered into as the result of the employer's fraud or coercion, an employment standards officer may issue an order under subsection (1).

Effect of
order

(7) If an employer fails to apply under section 50 for a review of an order issued by an employment standards officer, the order becomes final and binding against the employer even though a review hearing is held to determine another person's liability under this Act.

10.—(1) Subsection 49 (1) of the Act is amended by striking out "under" in the fourth line and substituting "or has found that the employee has no other entitlements or that there are no actions which the

10 (1) Le paragraphe 49 (1) de la Loi est modifié par substitution, à «under» à la quatrième ligne, de «or has found that the employee has no other entitlements or that there are no actions which the employer is to

employer is to do or is to refrain from doing in order to be in compliance with”.

do or is to refrain from doing in order to be in compliance with».

(2) Subsection 49 (2) of the Act is repealed and the following substituted:

(2) Le paragraphe 49 (2) de la Loi est abrogé et remplacé par ce qui suit :

Review of
refusal to
issue order

(2) An employee who considers himself or herself aggrieved by the refusal to issue an order to an employer or by the issuance of an order that in his or her view does not include all of the wages or other entitlements to which he or she is entitled may apply to the Director in writing within fifteen days of the date of the mailing of the letter mentioned in subsection (1) or the date of the issue of the order or such longer period as the Director may for special reasons allow for a review of the refusal or of the amount of the order.

Appointment
of adjudicator

(3) Upon receipt of an application for review, the Director may appoint an adjudicator who shall hold a hearing.

Parties to
hearing

(4) The employee who applied for the review, the employment standards officer whose order or refusal to make an order is the subject of the review and such other persons, including the employer and directors of the employer, as the adjudicator may specify are parties to the review hearing.

Power of
adjudicator

(5) The adjudicator who is conducting the hearing may with necessary modifications exercise the powers conferred on an employment standards officer under this Act and may make an order with respect to the refusal or an order to amend, rescind or affirm the order of the employment standards officer.

Notice

(6) When the adjudicator makes an order or amends, rescinds or affirms an order of the employment standards officer, he or she shall notify the employee and any other person affected by it of the order by prepaid letter addressed to the person's last known address.

Decision of
adjudicator

(7) The order of the adjudicator is not subject to a review under section 50 and is final and binding on the parties.

11.—(1) Subsection 50 (1) of the Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 3, 1988, chapter 7, section 2 and 1991, chapter 5, section 17, is further amended by inserting after “39m” in the amendment of 1991 “40u”.

11 (1) Le paragraphe 50 (1) de la Loi, tel qu'il est modifié par l'article 3 du chapitre 55 des Lois de l'Ontario de 1983, par l'article 2 du chapitre 7 des Lois de l'Ontario de 1988 et par l'article 17 du chapitre 5 des Lois de l'Ontario de 1991, soit modifié de nouveau par insertion, après «39m» dans la modification de 1991, de «40u».

(2) Subsection 50 (3) of the Act is repealed and the following substituted:

(2) Le paragraphe 50 (3) de la Loi est abrogé et remplacé par ce qui suit :

Hearing

(3) The Director shall select a referee from the panel of referees to hear the review.

(3) Section 50 of the Act, as amended by the Statutes of Ontario, 1983, chapter 55, section 3 and 1988, chapter 7, section 2, is further amended by adding the following subsections:

(3) L'article 50 de la Loi, tel qu'il est modifié par l'article 3 du chapitre 55 des Lois de l'Ontario de 1983 et par l'article 2 du chapitre 7 des Lois de l'Ontario de 1988, est modifié de nouveau par adjonction des paragraphes suivants :

Interest

(1a) An employer who has applied for a review of the order is liable for interest as prescribed on any wages that are found to be owing and such interest shall be paid according to the decision of the referee.

Information
on entitlement
to
wages

(5a) If an employer applies for a review, the employer shall provide the facts supporting why the entitlement to the wages

and why other directions or entitlements ordered, if any, are being challenged for each employee to the Director within fifteen days of applying for the review or such longer period as the Director may for special reasons allow, unless the Director waives this requirement in whole or in part.

Expedited
hearing

(5b) Not later than forty-five days after the review was applied for, the referee shall, before considering any substantive issue, commence the hearing on the employee's entitlement to wages.

Extensions

(5c) The referee may allow an extension of the period set out in subsection (5b) if an extension has been given under subsection (5a) or for other special reasons.

Interim
order

(5d) If, before the end of the hearing, the referee finds that there is an undisputed portion of wages, he or she shall affirm or amend the order of the employment standards officer or make such other order as he or she considers appropriate to the extent of the undisputed portion of the wages before the hearing is completed.

Decision of
referee

(5e) The referee shall issue his or her decision within ninety days after the first day of hearing, unless a referee designated by the Minister grants an extension for special reasons.

12. Section 51 of the Act is amended by adding the following subsections:

12 L'article 51 de la Loi est modifié par adjonction des paragraphes suivants :

Deemed
employers

(1a) Directors of an employer that is the subject of a report under subsection (1) have all the rights and defences of an employer for the purposes of the review and are bound by this section in like manner as the employer, except that their liability is limited to the amounts set out in subsections 40s (7) and (8) and they may only be ordered to pay wages as described in subsection 40s (3).

Idem

(1b) For purposes of a hearing provided for under subsection (1), a reference to "employer" shall be deemed to read as a reference to "director".

Information
on entitle-
ment for
wages

(1c) An employer who is the subject of a report under subsection (1) shall provide the facts supporting why any entitlement to wages and other possible entitlements are disputed for each employee to the Director within fifteen days of the Director appointing a referee or such longer period as the referee may for special reasons allow, unless the referee waives this requirement in whole or in part.

Expedited
hearing

(1d) Not later than forty-five days after the Director appoints the referee or such longer period as the referee may for special reasons allow and before considering any other substantive issue, the referee shall commence the hearing on the employee's entitlement to wages.

Interim deci-
sion

(1e) If, before the end of the hearing, the referee finds that there is an undisputed portion of wages or that certain wages are owed, he or she shall make an interim order with respect to such wages.

Decision of
referee

(1f) The referee shall issue his or her decision within ninety days after the first day of hearing, unless a referee designated by the Minister grants an extension for special reasons.

13. Section 52 of the Act is repealed and the following substituted:

13 L'article 52 de la Loi est abrogé et remplacé par ce qui suit :

Payment to
Director

52.—(1) Where the Director has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to an employer who is liable to make any payment under this Act or to a director who is liable to make any payment under this Act, the Director may, by registered letter or

letter served personally, demand that the person pay the money otherwise payable to the employer or to the director in whole or in part to the Director in trust on account of liability under this Act.

Receipt of
Director

(2) The receipt of the Director for money paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability to
pay

(3) Every person who has discharged any liability to an employer who is liable to make a payment under this Act or to a director who is liable to make a payment under this Act without complying with a demand under this section is liable to pay an amount equal to the liability discharged or the amount that he or she was required under this section to pay, whichever is the lesser.

14.—(1) Subsection 54 (1) of the Act is amended by adding after “employees” in the third line “or requiring a director to pay any money to the Director for or on behalf of an employee or employees”.

14 (1) Le paragraphe 54 (1) de la Loi est modifié par insertion, après «employees» à la troisième ligne, de «or requiring a director to pay any money to the Director for or on behalf of an employee or employees».

(2) Subsection 54 (2) of the Act is repealed and the following substituted:

(2) Le paragraphe 54 (2) de la Loi est abrogé et remplacé par ce qui suit :

Copy of
certificate

(2) The Director shall send a copy of the certificate to the employer or to the director, as the case may be, by registered mail and shall advise the employer or the director of the date the certificate was filed.

15. Section 58 of the Act is amended by adding the following subsection:

15 L'article 58 de la Loi est modifié par adjonction du paragraphe suivant :

Offence

(2) No person shall provide false or misleading information under this Act.

16. Subsection 65 (1) of the Act, as amended by the Statutes of Ontario, 1987, chapter 30, section 7 and 1990, chapter 26, section 4, is further amended by adding the following clauses:

16 Le paragraphe 65 (1) de la Loi, tel qu'il est modifié par l'article 7 du chapitre 30 des Lois de l'Ontario de 1987 et par l'article 4 du chapitre 26 des Lois de l'Ontario de 1990, est modifié de nouveau par adjonction des alinéas suivants :

- (rb) prescribing other payments that are wages for purposes of subsection 40b (2);
- (rc) establishing criteria for seeking repayment for excess compensation for purposes of section 40m;
- (rd) governing the payment of interest under any or all of sections 40p, 40s and 50;
- (re) providing for and governing the consolidation of hearings under this Act;
- (rf) providing for the manner of apportioning compensation under subsection 40j (2);
- (rg) prescribing a maximum amount of compensation under section 40i;
- (rh) prescribing persons or classes of persons for purposes of section 40qb;
- (ri) governing the conditions that must be met before there is a deemed assignment of compensation under section 40qb and the restrictions that may be placed on such assignments.

Transition

17.—(1) An employee who would be eligible for compensation from the Employee Wage Protection Program under subsection

17 (1) L'employé qui serait admissible à une indemnité dans le cadre du Programme de protection des salaires des employés aux

Disposition
transitoire

40e (1) of the *Employment Standards Act*, as enacted by section 5 of this Act, may be compensated,

- (a) when, on or after the 1st day of October, 1990 and before section 5 of this Act is proclaimed in force, wages, excluding termination pay and severance pay, become due and owing;
- (b) when, due to a lay-off that commenced on or after the 1st day of October, 1990 and before section 5 of this Act is proclaimed in force, the employee is terminated or is deemed to be terminated and termination pay or severance pay is due and owing;
- (c) when a termination occurs on or after the 1st day of October, 1990 and before section 5 of this Act is proclaimed in force and termination pay or severance pay is due and owing.

Idem

(2) If an order is issued with respect to wages described in subsection (1), the order shall not exceed the sum of,

- (a) \$4,000 with respect to any wages other than the employee's severance pay and compensation awarded under section 39;
- (b) the amount of the employee's severance pay, if any; and
- (c) the amount of compensation awarded under section 39, if any.

Idem

(3) For purposes of this section, any claim described in clause 40e (1) (a) of the *Employment Standards Act*, as made by section 5 of this Act, that has been verified by the Program Administrator is deemed to be an order.

Idem

(4) Despite subsection (2), the maximum amount of compensation that an employee may receive under this section is \$5,000.

Commence-
ment

18. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

19. The short title of this Act is the *Employment Standards Amendment Act (Employee Wage Protection Program)*, 1991.

termes du paragraphe 40e (1) de la loi intitulée *Employment Standards Act* («*Loi sur les normes d'emploi*»), tel qu'il est adopté par l'article 5 de la présente loi, peut être indemnisé dans les cas suivants :

- a) lorsque, le 1^{er} octobre 1990 ou par la suite, mais avant que l'article 5 de la présente loi ne soit proclamé en vigueur, un salaire, à l'exception des indemnités de licenciement et de cessation d'emploi, devient exigible;
- b) lorsque, en raison d'une mise à pied ayant pris effet le 1^{er} octobre 1990 ou par la suite, mais avant que l'article 5 de la présente loi ne soit proclamé en vigueur, l'employé est licencié ou est réputé l'être et qu'une indemnité de licenciement ou de cessation d'emploi lui est due;
- c) lorsque son licenciement survient le 1^{er} octobre 1990 ou par la suite, mais avant que l'article 5 de la présente loi ne soit proclamé en vigueur, et qu'une indemnité de licenciement ou de cessation d'emploi lui est due.

(2) Dans le cas où est rendue une ordonnance relativement au salaire visé au paragraphe (1), l'indemnité prévue par l'ordonnance ne dépasse pas la somme des montants suivants :

Idem

- a) 4 000 \$ au titre de tout salaire, à l'exception de l'indemnité de cessation d'emploi de l'employé et de l'indemnité qui lui est attribuée en vertu de l'article 39;
- b) le montant de l'indemnité de cessation d'emploi de l'employé, le cas échéant;
- c) le montant de l'indemnité qui lui est attribuée en vertu de l'article 39, le cas échéant.

(3) Pour l'application du présent article, toute demande visée à l'alinéa 40e (1) (a) de la loi intitulée *Employment Standards Act* («*Loi sur les normes d'emploi*»), tel qu'il est adopté par l'article 5 de la présente loi, et qu'a vérifiée l'administrateur du Programme est réputée une ordonnance.

Idem

(4) Malgré le paragraphe (2), l'indemnité maximale qu'un employé peut recevoir en vertu du présent article est de 5 000 \$.

Idem

18 La présente loi entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Entrée en
vigueur

19 Le titre abrégé de la présente loi est *Loi de 1991 modifiant la Loi sur les normes d'emploi (Programme de protection des salaires des employés)*.

Titre abrégé